



**STATE OF DELAWARE**

**DEPARTMENT OF JUSTICE**

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December 12, 2006

**PLEASE REPLY TO:** 577-8500

The Honorable Kent A. Jordan  
United States District Court  
844 King Street  
Wilmington, DE 19801

Re: *Capano v. Carroll, et al.* C.A. 06-58 KAJ

Dear Judge Jordan,

I received Mr. Bernstein's letter regarding the status of Mr. Capano's case today. The State agrees with Mr. Bernstein's representation that the parties have agreed that no evidentiary hearing is required in this case. The State also agrees that it has filed an answer and the state court records. However, the state does not agree to Mr. Bernstein's proposed briefing schedule. As I explained to Mr. Bernstein, the State believes that it has adequately addressed all the claims presented in Mr. Capano's habeas petition, and therefore the State does not believe that additional briefing is necessary. I informed Mr. Bernstein that he was free to file additional briefing if he so desired, but that the State did not anticipate further briefing on its part. Thus, the State respectfully requests that Mr. Bernstein be allowed to file a brief, without requiring the State to respond. If, upon receipt of Mr. Bernstein's brief, the State feels that additional briefing is required, the State will so indicate at that time.

Very truly,

/s/ Elizabeth R. McFarlan

cc: Joseph M. Bernstein, Esq.